

UNITED STATES DISTRICT COURT
DISTRICT OF DELAWARE

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DAVIS INTERNATIONAL, LLC, HOLDEX, LLC,
FOSTON MANAGEMENT, LTD, and
OMNI TRUSTHOUSE, LTD,

Case No. 04-1483
(GMS)

Plaintiffs,

- against -

NEW START GROUP CORP., VENITOM CORP.,
PAN-AMERICAN CORP., MDM BANK,
URAL-GORNO METALURAGICAL COMPANY,
EVRAZ HOLDING,
MIKHAIL CHERNOI, OLEG DERIPASKA,
AROLD KISLIN, MIKHAIL NEKRICH, and
ISKANDER MAKMUDOV,

Defendants.
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REPLY DECLARATION OF LISA C. COHEN

LISA C. COHEN, under penalty of law, hereby declares:

1. As counsel to Arnold Kislin, one of the Defendants in this action, I submit this reply declaration in further support of the motion to dismiss the complaint pursuant the doctrine of direct estoppel and to enjoin Plaintiffs from seeking further relief against these Defendants based upon the allegations set forth in the complaint (the "Estoppel and Injunction Motion"). All of the Defendants have joined in the Estoppel and Injunction Motion.

2. On about April 26, 2005, Plaintiffs amended their Complaint in this action. The only substantive changes between Plaintiffs' original Complaint and their Amended Complaint are that: (1) one defunct company has been omitted as a defendant; and (2) the two state law claims upon which Plaintiffs initially sought relief – conversion

and equitable relief – are deleted. (A copy of the Amended Complaint is attached hereto as Exhibit A.)

3. On the same day, Plaintiffs filed a new Complaint in Delaware Chancery Court against all of the same defendants that are Defendants here. (A copy of the Chancery Court complaint is attached hereto as Exhibit B.) That Chancery Court Complaint asserts the same two state law claims that were deleted from this action, as well as two new state law claims.

4. As set forth in the table attached hereto as Exhibit C, all of the substantive factual allegations made in Plaintiffs' current Chancery Court Complaint are included in the Amended Complaint in this action, and they were also included in the original Complaint in this action; most were also included in the case titled *Base Metal Trading SA v. Russian Aluminum*, 253 F. Supp. 2d 681 (S.D.N.Y. 2003), *aff'd sub nom.*, *Base Metal Trading Ltd. v. Russian Aluminum*, 98 Fed. Appx. 47, 2004 WL 928165 (2d Cir. 2004) (Exhibit A to the Cohen Declaration, dated March 18, 2005, submitted on March 31, 2005 as Exhibit 1 to the Affidavit of Charles M. Oberly, III.)

5. Since Plaintiffs filed the new Delaware Chancery Court pleadings, I have had several conversations with Plaintiffs' lead counsel, Bruce Marks, requesting that, when the complaint is served, he agree to stay the action pending the outcome of the Estoppel and Injunction Motion before this Court. As I explained repeatedly to Mr. Marks, agreeing to stay the Delaware Chancery Court action would avoid duplicative litigation and would eliminate the possibility of wasting judicial resources if this Court grants the requested injunction. To date, Mr. Marks has refused to stay the action until this Court reaches its decision on the Motion. Instead, Mr. Marks has only offered a


conditional stay until September 1, 2005, requiring, among other things, that all Defendants give up their substantive right to proper service pursuant to the Hague Convention before he agrees to even that limited stay.

6. Attached hereto are the following exhibits that are referred to Defendants' Reply Brief in further support of the Estoppel and Injunction Motion:

- Exhibit D contains pages that were in the appellate brief submitted to the Second Circuit Court of Appeals in *Base Metal Trading* by the GOK plaintiffs, which consists of these Plaintiffs and GOK creditors who were plaintiffs in that case.
- Exhibit E is the transcript of the oral argument before this Court on April 13, 2005.
- Exhibit F is the section of the Preliminary Offering Circular issued by Evraz Group dated May 19, 2005 titled "Risk Factors."
- Exhibit G is a letter to the Hon. John G. Koeltl, United States District Judge for the Southern District of New York, from counsel for some of the plaintiffs in *Base Metal Trading*, dated June 26, 2002.
- Exhibit H is a second letter to the Hon. John G. Koeltl, from counsel for some of the plaintiffs in *Base Metal Trading*, dated July 29, 2002; on this letter appears a memo endorsed by Judge Koeltl denying the application.

7. I declare under penalty of perjury that the foregoing is true and correct.

Executed on June 24, 2005, in New York, New York.



Lisa C. Cohen